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December 19, 2005

**REDACTED – FOR PUBLIC INSPECTION**

**VIA HAND DELIVERY**

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

**Re: Responses to Information and Document Request of December 5, 2005 and Submission of Confidential Documents Under Seal Pursuant to Protective Order (DA 05-1673) Issued in MB Docket No. 05-192**

Dear Ms. Dortch:

This letter sets forth the responses of Time Warner Inc. ("Time Warner") to the December 5, 2005 letter from Donna C. Gregg, Media Bureau Chief, transmitting a request for certain information and documents (the "Information and Document Request") related to the transactions involving Time Warner, Comcast Corporation ("Comcast") and Adelphia Communications Corporation ("Adelphia") that are the subject of the Consolidated Application for Authority to Transfer Control in MB Docket No. 05-192 (the "Transactions").

The exhibits and Documents to be produced by Time Warner in response to the Information and Document Request include highly confidential information. As the Commission is aware, on December 14, 2005, Adelphia, Comcast and Time Warner submitted a joint request for expanded confidentiality protection analogous to that provided by the Commission in other transactions. Accordingly, at this time, Time Warner is submitting the redacted version of this letter, and is including only those attachments for which higher level confidentiality has not been requested and which have been completed to date. As discussed with Media Bureau staff, Time Warner will supplement this response on a rolling basis as specific attachments have been completed and after the request for higher level confidentiality has been addressed.

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**I.A. Explain by means of a flow chart/organizational chart or series of such charts, how the transactions set forth in the Exchange Agreement, will proceed. Include in such charts a description of the assets, including the identity of the owner of such assets, which will be placed in each company prior to the stock swaps described in such Exchange Agreement.**

**Response:**

Pursuant to the Exchange Agreement, dated as of April 20, 2005, among Time Warner Cable Inc. ("TWC"), Comcast Corporation ("Comcast") and certain other related entities, the parties will exchange 100% of the outstanding equity securities of each of the following:

| TWC Equity for | Comcast Entity |
|---|---|
| 1) Cable Holdco Exchange I LLC | CAC Exchange I, LLC |
| 2) Cable Holdco Exchange II LLC | CAP Exchange I, LLC |
| 3) Cable Holdco Exchange III LLC | C-Native Exchange I, LLC |
| 4) Cable Holdco Exchange IV LLC<br>Cable Holdco Exchange IV-2 LLC<br>Cable Holdco Exchange IV-3 LLC | C-Native Exchange II, LP<br>C-Native Exchange IIA, LP |
| 5) Cable Holdco Exchange V LLC | C-Native Exchange III, LP<br>C-Native Exchange III GP, LLC<br>Comcast of Dallas GP, LLC<br>Comcast of Dallas, LP |
| 6) Cable Holdco Exchange VI LLC | CAC Exchange II, LLC |

1) <u>Cable Holdco Exchange I LLC/CAC Exchange I, LLC</u>

Time Warner NY Cable LLC ("TWNY") will assign certain cable systems acquired from Adelphia to Cable Holdco Exchange I LLC. Comcast, through intermediate entities, will assign certain cable systems acquired from Adelphia to CAC Exchange I, LLC. The parties then will exchange 100% of the equity securities of these entities, so the cable system assets of Cable Holdco Exchange I LLC will be operated by Comcast and the cable system assets of CAC Exchange I, LLC will be operated by TWC. *See* Exhibit I(A)(1).

2) <u>Cable Holdco Exchange II LLC/CAP Exchange I, LLC</u>

TWNY will assign certain cable systems acquired from Adelphia to Cable Holdco Exchange II LLC. Comcast, through intermediate entities, will assign certain cable systems acquired from Adelphia to CAP Exchange I, LLC. The parties then will exchange 100% of the equity securities of these entities, so the cable system assets of Cable Holdco Exchange II LLC will be operated by Comcast and the cable system assets of CAP Exchange I, LLC will be operated by TWC. *See* Exhibit I(A)(2).

3) Cable Holdco Exchange III LLC/C-Native Exchange I, LLC

TWNY will assign certain cable systems acquired from Adelphia to Cable Holdco Exchange III LLC. Comcast, through intermediate entities, will assign certain of its existing cable systems to C-Native Exchange I, LLC. The parties then will exchange 100% of the equity securities of these entities, so the cable system assets of Cable Holdco Exchange III LLC will be operated by Comcast and the cable system assets of C-Native Exchange I, LLC will be operated by TWC. *See* Exhibit I(A)(3).

4) Cable Holdco Exchange IV LLC, Cable Holdco Exchange IV-2 LLC and Cable Holdco Exchange IV-3 LLC/C-Native Exchange II, LP and C-Native Exchange IIA, LP

TWNY will assign certain cable systems acquired from Adelphia to Cable Holdco Exchange IV LLC, Cable Holdco Exchange IV-2 LLC and Cable Holdco Exchange IV-3 LLC. Comcast, through intermediate entities, will assign certain of its existing cable systems to C-Native Exchange II, LP and C-Native Exchange IIA, LP. The parties then will exchange 100% of the equity securities of these entities, so the cable system assets of Cable Holdco Exchange IV LLC, Cable Holdco Exchange IV-2 LLC and Cable Holdco Exchange IV-3 LLC will be operated by Comcast and the cable system assets of C-Native Exchange II, LP and C-Native Exchange IIA, LP will be operated by TWC. *See* Exhibit I(A)(4).

5) Cable Holdco Exchange V LLC/C-Native Exchange III, LP, Comcast of Dallas GP, LLC, Comcast of Dallas, LP and C-Native Exchange III GP, LLC

TWNY will assign certain cable systems acquired from Adelphia to Cable Holdco Exchange V LLC. Comcast, through intermediate entities, will assign certain of its existing cable systems to C-Native Exchange III, LP. Comcast will also cause the equity interests in the entities owning Comcast's Dallas cable system, Comcast of Dallas GP, LLC and Comcast of Dallas, LP, to be transferred to C-Native Exchange III GP, LLC. The parties then will exchange 100% of the equity securities of these entities, so the cable system assets of Cable Holdco Exchange V LLC will be operated by Comcast and the cable system assets of C-Native Exchange III, LP, C-Native Exchange III GP, LLC, Comcast of Dallas GP, LLC and Comcast of Dallas, LP will be operated by TWC. *See* Exhibit I(A)(5).

6) Cable Holdco Exchange V LLC/CAC Exchange II, LLC

TWC will cause a cable system serving a portion of Philadelphia owned by it to be assigned to Cable Holdco Exchange VI LLC. Comcast, through intermediate entities, will assign certain cable systems acquired acquired from Adelphia to CAC Exchange II, LLC. The parties then will exchange 100% of the equity securities of these entities, so the cable system assets of Cable Holdco Exchange VI LLC will be operated by Comcast and the cable system assets of CAC Exchange II, LLC will be operated by TWC. *See* Exhibit I(A)(6).

**I.B. Provide all portions of Documents provided at Exhibits A-O of the Public Interest Statement that were omitted from the Application and that have not been provided to date.**

**Response:**

All portions of the documents provided at Exhibits A-O of the Public Interest Statement were either submitted with the Public Interest Statement on May 18, 2005 or in the submission of confidential schedules and exhibits filed with the Commission on October 4, 2005.

**I.C. How are the lock up and tolling agreements set forth in section 2.3 of the Redemption Agreement (Exhibit D) and section 2.3 of the Redemption Agreement (Exhibit E) respectively, compatible with the Comcast Trustee's duty to dispose of the trust assets as soon as practicable?**

**Response:**

This question appears directed solely at Comcast and Time Warner thus defers to Comcast's response to this question.

**II.A. Identify each Cable System owned, operated, managed, or attributed to the Company as of June 30, 2005, and for each provide the following.**

1. **the Physical System IDs (PSID) and Community Unit IDs (CUID)**
2. **Nielsen Designated Market Area(s) containing the System**
3. **counties served by the System**
4. **cluster containing the System**
5. **the date that the Company acquired an attributable interest in the System, and if acquired in the previous three years, the previous owner of the Company's interest**
6. **the Economic Interest held by each of the Applicants**
7. **changes in the Economic Interests of each of the Applicants if the license transfer is approved**
8. **whether the Company currently manages the Systems and the division of the Company responsible for managing the System**
9. **whether the Company will manage the System if the license transfer is approved**
10. **list competing MVPDs, excluding private cable and wireless cable operators, and the technology used by the competitor (wired or satellite).**

**Response:**

The information in response to Items 1-3 and 6-9 was submitted to the Commission on December 12, 2005. Additional items are responded to below.

4. Clusters.

The information request defines "cluster" as "a group of commonly owned or managed cable systems in close proximity that are operated on an integrated basis through the use of common personnel, marketing or shared use of technical facilities." No definition of "close proximity" is provided.

As indicated in the response submitted on December 12th, TWC's operations are conducted through thirty-one divisions ("Divisions"), generally organized geographically. Exhibit A to the December 12th response consists of a 113-page spreadsheet, clearly delineating each of TWC's Divisions and the communities served by systems within each Division. Each of the thirty-one TWC Divisions are operated, at least to some extent, on an integrated basis in that each division has certain personnel with responsibilities limited to that particular Division, may employ Division-specific marketing from time to time, and systems within a Division may share certain technical facilities. However, TWC believes that its National and Southwest Divisions are not properly considered to be "clusters" within the definition set forth in the information request due to lack of "close proximity" of certain systems and communities served in those Divisions.

5. Systems acquired within last three years.

All systems in which TWC has acquired an ownership interest in the previous three years, as well as the previous owners, are identified on Exhibit II(A)(5).

10. MVPD competitors.

TWC faces satellite competition from DirecTV and EchoStar on a nationwide basis. In addition, TWC notes that several of the nation's largest incumbent local exchange carriers, including Verizon and AT&T (SBC) have begun to aggressively seek and obtain local cable television franchises and/or to construct cable television distribution facilities in various communities.[1] TWC does not routinely track every wired MVPD competitor that may be franchised or operating in communities served by TWC. To the best of TWC's knowledge, the wired MVPD competitors set forth on Exhibit II(A)(10) and possibly others, are operating in one or more communities served by TWC in the indicated Divisions. In addition, although it is not clear whether they meet the definition of MVPDs, TWC also faces growing competition from Internet-based video providers.[2]

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[1] For example, press reports indicate that as recently as December 13, the City of Hermosa Beach, CA awarded a cable television franchise to Verizon. *See* Linda Haugsted, *Verizon Hits Hermosa Beach*, MULTICHANNEL NEWS, Dec. 14, 2005, *available at*: http://www.multichannel.com/index.asp?layout=articlePrint&articleid=CA6291679. TWC will acquire a cable system operated by an affiliate of Adelphia in Hermosa Beach pursuant to the Transactions.

[2] Peter Grant, *Outside the Box: As Broadband Connections Proliferate, So Do the Opportunities for Niche Video-content Providers*, WALL ST. J., Dec. 19, 2005, at R11.

**II.B For the Cable Systems identified in II.A. that are operated or managed by the Company, for each of the previous four quarters, provide the following at the most granular reporting level retained in the ordinary course of business.**

1. **the number of households for which each of the following services were available:**
   a) **Basic Cable**
   b) **Expanded Basic Cable**
   c) **Digital Cable**
   d) **Residential High-Speed Internet Access**
   e) **Telephony**
2. **total Subscribers for each of the following services:**
   a) **Basic Cable**
   b) **Expanded Basic Cable**
   c) **Digital Cable**
   d) **Residential High-speed Internet Access**
   e) **Telephony**
3. **average monthly churn among Subscribers, expressed as a percentage, for each of the following services:**
   a) **Basic Cable**
   b) **Expanded Basic Cable**
   c) **Digital Cable**
   d) **Residential High-Speed Internet Access**
   e) **Telephony**
   f) **cable television service and Residential High-Speed Internet Access**
   g) **cable television service, Residential High-Speed Internet Access, and Telephony.**

**Response:**

Information in response to Item II.B. is set forth on the spreadsheet attached as Exhibit II(B). The most granular level at which TWC maintains this information in the ordinary course is the Division level. TWC does not maintain churn data centrally in the ordinary course with respect to "double play" (cable television service and Residential High-Speed Internet Access) or "triple play" (cable television service, Residential High-Speed Internet Access and Telephony) accounts. TWC is continuing to survey its Divisions, and to the extent such data was maintained during the applicable time frames at the Division level, TWC will supplement this response with respect to the affected Divisions.

**II.C. For the Cable Systems identified in II.A. that are operated or managed by the Company, provide, at the most granular reporting level retained in the ordinary course of business, the average revenue per Subscriber, gross margin per Subscriber, and operating margin per Subscriber for each of the previous four quarters for the following services. In addition, provide an explanation of the methods used to allocate multi-product discounts to the individual product lines.**

 

1. **Basic Cable**
2. **Expanded Basic Cable**
3. **Digital Cable**
4. **Residential High-Speed Internet Access**
5. **Telephony**
6. **cable television service and Residential-High Speed Internet Access**
7. **cable television service, Residential High-Speed Internet Access, and Telephony.**

**Response:**

Information in response to Item II.C. is set forth on the spreadsheet attached as Exhibit II(C)(1). Commencing with 2Q 05, TWC began to maintain information responsive to this request in the ordinary course with respect to three relevant product lines: video (which would appear to encompass Items II.C.1-3), Residential High Speed Data (Item II.C.4.) and Voice (Item II.C.5.) For the preceding three quarters, TWC maintained revenue per subscriber information in the ordinary course on an aggregate basis, *i.e.,* not broken out by product line.

TWC does not maintain information by Division or product line in the ordinary course on "gross margin per subscriber" or "operating margin per subscriber," terms that are not defined in the Information and Document Request. Exhibit II(C)(1) sets forth the Variable Margin per subscriber for each of the three product lines described above, by Division, for 2Q 05. TWC defines Variable Margin as total revenues less variable (or direct) expenses. Because TWC did not maintain direct expense information by Division in the ordinary course prior to 2Q 05, Variable Margin information is available only for that quarter.

Given that data relating to Operating Margin per Subscriber is not maintained in the ordinary course, we are providing Operating Income Before Depreciation and Amortization ("OIBDA") information that is maintained in the ordinary course by Division, but is not broken out by product line.[3]

TWC's policy for allocation of multi-product discounts to individual product lines is attached as Exhibit II(C)(2).

**II.D. Provide information on all promotions for packages that include either Residential High-speed Internet Access or video programming offered during the previous year that require a minimum subscription period or that involve a termination fee. The**

[3] OIBDA is a non-GAAP measure of financial performance used to show profitability in continuing business activities excluding the effects of capitalization and tax structure. OIBDA is calculated as operating income before depreciation, amortization, tax and interest. Time Warner utilizes OIBDA, among other measures, to evaluate the performance of its businesses. OIBDA eliminates the uneven effect across all business segments of considerable amounts of non-cash depreciation of tangible assets and amortization of certain intangible assets that were recognized in business combinations. A limitation of this measure, however, is that it does not reflect the periodic costs of certain capitalized tangible and intangible assets used in generating revenues in the Time Warner businesses.

 

**time period for which the promotions were in effect should be specified, as should the number of customers that took advantage of the discounts. Provide all Documents created in the previous twelve months on plans and strategies for promotions that require a minimum subscription period or that involve a termination fee.**

Response:

Time Warner has reviewed the files of relevant employees and hereby produces copies of responsive Documents attached as Document Set A. In addition, the time period for which specific promotions were in effect and the number of customers that took advantage of each are summarized in the chart attached as Exhibit II(D).

**II.E. Provide all Documents relating to pricing and promotions for MVPD service that target the customers of competing MVPDs and strategies of bundling MVPD service with other services that target the customers of competing MVPDs.**

Response:

Time Warner has reviewed the files of relevant employees and hereby produces copies of responsive Documents attached as Document Set B.

**II.F. Provide all work papers and supporting details for the attributable Subscriber totals of the Applicants discussed on pages 73-75 in the Public Interest Statement.**

Response:

Post-closing attributable subscriber totals for TWC are addressed in the second full paragraph on page 73 of the Public Interest Statement. These estimates were prepared by counsel, and hence there are no non-privileged work papers to be produced in response to this request. Nevertheless, the computations are straight forward and clear on their face.

The figure for existing TWC subscribers, 10.9 million, was as reported in the Time Warner Inc. SEC Form 10-K for the year ending December 31, 2004 at 5. The subscriber figure for systems managed by Bright House Networks (in which TWC holds an attributable interest) is stated in the same Time Warner Inc. SEC Form 10-K as "approximately 2.1 million" (p. 113), and that figure was rounded up to 2.2 million. The net gain of 3.5 million subscribers for TWC was taken from the Investor Relations Presentation dated April 21, 2005 upon the announcement of the Time Warner/Comcast/Adelphia transaction. *See* Exhibit II(F). The Investor Relations Presentation goes on to report that TWC will acquire approximately 3.1 million subscribers from Adelphia and 1.2 million subscribers from Comcast (p. 10) and that approximately 750,000 subscribers will be swapped to Comcast (p. 11), resulting in a net gain of approximately 3.5 million subscribers.

As explained in the Public Interest Statement, the figure for total MVPD subscribers was obtained from the most recent Kagan report available at that time, Kagan Media Money, April 26, 2005, at 7. Thus, Time Warner's conclusion in the Public Interest Statement that TWC's attributable share for horizontal cap purposes would be under 18 percent is fully documented: 10.9M + 2.2M + 3.5M = 16.6M/92.6M = 17.9%.

**II.G. With respect to the DMA-level Subscriber data provided on June 21, 2005, restate any figures that do not include all Subscribers attributable to any Applicant and identify any other entity to which such Subscribers are attributable. Provide all work papers and supporting details for these calculations.**

**Response:**

Time Warner has reviewed and updated its chart submitted on June 21, 2005 to include attributable Bright House Network subscribers and resubmits that chart attached as Exhibit II(G). The supporting details for these updated calculations are the same system/subscriber detail charts submitted to the Commission by Time Warner Inc. on December 12, 2005.

**II.H. Provide all Documents relating to the effects of geographic rationalization or Clustering with respect to the operation of Cable Systems and the provision of programming or other services on such Systems, including Documents relating to the business case for the transactions at issue as they pertain to geographic rationalization or Clustering.**

**Response:**

Time Warner has reviewed the files of relevant employees and hereby produces copies of responsive Documents attached as Document Set C.

**III.A. Identify each Sports Programming Network distributed in the U.S. that the company owns, controls, or in which it has an attributable interest, and for each network with a Sports Programming Network Market that contains a cable system that will experience a change in an Applicant's Economic Interest, state the following:**

1. **the Economic and debt interest held by each of the Applicants and by any Sports Teams, Leagues, and Organizations**
2. **changes in the Economic and debt interests of each of the Applicants and any Sports Teams, Leagues, and Organizations if the license transfer is approved**
3. **the launch date**
4. **the geographic areas in which the network is distributed**
5. **the identity of the Sports Teams, Leagues, or Organizations whose distribution rights are held by the network, and for each such network:**
   a) **the official name of the Team, League, or Organization and the sport played**

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- **b) the term of the contract that grants the right to distribute the Sports Programming and whether the Company has a right of first refusal**
- **c) the geographic area in which the network has rights to distribute the Sports Programming**
- **d) the number of Live events entitled to be distributed Live annually by the network under the agreement**
- **e) the number of Live events licensed annually to the network in which the network has an exclusive license vis-à-vis another regional sports network**
- **f) the total number of Live events that the Team, League, or Organization could make available annually to video programmers and the actual number of Live events it makes available to all video programmers**

**Response:**

TWC holds no attributable interest in any operational Sports Programming Network, as defined in the Information and Document Request. Time Warner holds attributable interests in various Video Programming Network ("VPNs"), as defined in the Information and Document Request, including certain VPNs owned and operated by Turner Broadcasting System, Inc. ("Turner"). Time Warner notes that the Information and Document Request expressly excludes TNT and TBS from the Sports Programming Network definition. Turner also owns and operates Turner South, which it considers to be a regional general interest and lifestyle network rather than a regional sports network. Nevertheless, because Turner South distributed somewhat over 200 hours of Sports Programming (as defined) in the previous 12 months, Time Warner provides responses to Items III. A-C as they relate to Turner South in Exhibit III(A) attached hereto.

**III.B. For each Sports Programming Network responsive to III.A., provide the following for the previous four quarters and each year since January 1, 2002.**

1. **the number of Subscribers**
2. **affiliate revenues**
3. **advertising revenues**
4. **other revenues (described briefly)**
5. **the viewer rating, share, and weekly cumulative audience by:**
   - **a) all persons**
   - **b) persons aged 18-49**
   - **c) men aged 18-49**

**Response:**

The requested information for Turner South is provided in the materials attached hereto as Exhibit III(B).

**III.C. For each Sports Programming Network responsive to III.A., identify the MVPDs that distribute the network and, for each MVPD, state the following.**

 

1. **the date when the network was first carried**
2. **whether the network is carried on an analog or a digital tier**
3. **all periods for time in which the MVPD's right to carry the network lapsed and carriage of the network ceased**
4. **the date of expiration of the contract under which the network is currently distributed**
5. **the number of Subscribers to the MVPD that received the network for the previous four quarters**
6. **for each of the previous four quarters, the total revenues received by the Company from the MVPD in exchange for distribution of the network and total revenue categorized by:**
   a) **subscription fees**
   b) **other sources of revenue (with a brief description)**
7. **the number of advertising minutes made available for use by the MVPD for each of the previous four quarters**
8. **for each of the previous four quarters, total payments made to the MVPD categorized by:**
   a) **launch fees**
   b) **marketing support**
   c) **other payments (with a description)**

**Response:**

*See* Exhibit III(C) attached hereto.

**III.D. With respect to Applicants' refutation of claims regarding the degree of additional regional concentration that will result from the transactions within the footprints of specific regional sports networks (Applicants' Reply at 58 & Exh. G at pp. 15-17), provide all work papers and other Documents that support the stated findings, including the data used to determine the networks' service footprints and the pre- and post-transaction concentration of Subscribers within each footprint.**

**Response:**

This question appears directed solely at Comcast and Time Warner thus defers to Comcast's response to this question.

**III.E. Identify all Sports Teams, Leagues, and Organizations with which the Company or an attributable network has a contract granting distribution rights in the U.S. but is currently not distributing on an attributable Sports Programming Network, and for each state:**

1. **the official name of the Team, League, or Organization, the sport played, and its home venue**

2. **the term of the contract that grants the right to distribute the Sports Programming in the U.S. and whether the Company has a right of first refusal**
3. **the geographic area in which the Company has rights to distribute the Sports Programming**
4. **the percentage of total Live events entitled to be distributed Live under the agreement and the percentage for which the Live distribution rights are exclusive to video programming channels or cable systems in which the Company has an interest**
5. **plans to begin distributing Live events in the U.S.**

**Response:**

*See* Exhibit III(E) attached hereto.

**III.F. For each Company,**

1. **identify all Video Programming Networks for which the affiliation agreement makes the Company the exclusive cable or MVPD distributor of this programming in any area served by the Company.**

**Response:**

Time Warner provides as Exhibit III(F)(1) a chart identifying all Video Programming Networks for which Time Warner Cable is the exclusive cable or MVPD distributor of its programming in a Time Warner Cable service area.

2. **for each Video Programming Network listed on the Attachment hereto, provide:**

   a) **the Company's Economic and debt interests in the network**
   b) **the date the contract began**
   c) **the date the contract terminates**
   d) **the current monthly per Subscriber fee paid by the Company to the Video Programming Network**
   e) **the number of homes passed by Company-attributed Cable Systems transmitting the network on an analog basis**
   f) **the number of homes passed by Company-attributed Cable Systems transmitting the network solely on a digital basis**
   g) **the number of Company Subscribers purchasing access to the network for each of the previous four quarters**
   h) **the revenue from locally inserted advertising earned by the Company for each of the previous four quarters.**

**Response:**

Time Warner provides as Exhibit III(F)(2) a chart with the requested information for each of the identified Video Programming Networks.

**III.G. Provide the current affiliation contracts, including all amendments, for each of the following Video Programming Networks:**

1. **Outdoor Life Network**
2. **TV One**
3. **Style Network**
4. **Turner Classic Movies**
5. **CNN**
6. **The Outdoor Channel**
7. **BET**
8. **The Black Family Channel**
9. **Fine Living**
10. **AMC**
11. **Fox News Channel**

**Response:**

The current affiliation contracts, including all amendments, for each of the identified Video Programming Networks are attached as Document Set D.

**III.H. With reference to Applicants' Reply at pp. 106-107 and note 351, explain the process by which the Company makes decisions regarding the carriage of specific programming networks, in particular the extent to which carriage decisions are made at the corporate level and/or by individual System managers. Respond to allegations of The America Channel ("TAC") that some networks seeking carriage are given so-called "hunting licenses" authorizing them to negotiate for carriage with System managers, whereas networks affiliated with Comcast are given carriage "commitments" that do not require negotiations for carriage on individual Systems. (*See* TAC Petition to Deny at 40.)**

**Response:**

Time Warner understands this question to be directed specifically to Comcast. Nevertheless, Time Warner notes that TWC exercises careful business and editorial judgment in deciding which networks to carry on its cable systems. There are nearly 400 national cable networks currently available; on top of those, there are literally hundreds of ideas for additional networks in circulation, which often overlap with each other and with existing networks. When deciding which of these many channels to purchase and make available to its customers, TWC considers many factors, including, among others, overall product mix, programming content and quality, plant capacity, financial terms, and input from local management. TWC has been engaged in this process for a long time, and believes that its editorial judgment in these matters strike a careful balance among these various factors.

From time to time, TWC enters into what are colloquially known in the industry as "hunting license" agreements with programmers. These agreements are entered into at the TWC corporate level; however, they give programmers the ability and incentive to contact TWC's Divisions directly and encourage those Divisions to carry their channels. (In other words, the programmer is given a "license" by TWC corporate to "hunt" for carriage at individual Divisions.) Nevertheless, both "hunting license" agreements and those with carriage commitments are entered into only after consultation with local managers, and local managers must consult with managers at the TWC corporate level before launching a service pursuant to a "hunting license" agreement. Moreover, the factors that go into the decision of whether to offer a programmer a "hunting license" agreement are the same as the factors listed in the preceding paragraph that go into the decision of whether to offer a programmer an agreement with carriage commitments. Additionally, those factors are the same whether or not the programming network at issue is affiliated with Time Warner.

**III.I. Provide all documents relating to deliberations and decisions to distribute video programming via video-on-demand rather than as a video programming network.**

**Response:**

Time Warner has reviewed the files of relevant employees and hereby produces copies of responsive Documents attached as Document Set E.

**III.J. Provide all Documents relating to deliberations and decisions to launch new Sport Programming Networks.**

**Response:**

Time Warner has reviewed the files of relevant employees and hereby produces copies of responsive Documents attached as Document Set F.

**III.K. With respect to the discussion of terrestrial delivery of programming in Applicants' Reply at pp. 53-54:**

1. **identify the location and nature of the Comcast regional terrestrial networks referenced at p. 54 and explain why Comcast has chosen not to use them for the delivery of regional sports networks, as asserted in the Reply**
2. **explain whether the regional terrestrial networks and the national fiber network referenced on p. 54 would be suitable for the delivery of programming networks to cable headends such that programming delivered on those networks would not be considered to be "satellite-delivered" for purpose of the Commission's program access rules.**

 

**Response:**

This question appears directed solely at Comcast and Time Warner thus defers to Comcast's response to this question.

**IV.A. Provide all Documents relating to deliberations and decisions to stop, limit, hinder, slow, or otherwise impede the transmission of information over the Company's Residential High-speed Internet infrastructure based on the software application, source, destination, or other characteristic of the traffic. Documents regarding unsolicited commercial e-mail and malicious software need not be produced.**

**Response:**

Time Warner has reviewed the files of relevant employees and hereby produces copies of responsive Documents attached as Document Set G.

**IV.B. Provide a response to the allegations contained in the Petition to Deny of Free Press, et al., at pages 30-32 regarding the blocking of e-mail from afterdowningstreet.org.**

**Response:**

This question appears directed solely at Comcast and Time Warner thus defers to Comcast's response to this question.

**IV.C. Describe any and all efforts the Company has undertaken, or plans to undertake, to comply with the Commission's November 28th VoIP 911 deadline. Explain in detail, as a technical matter, how exactly the Company intends to comply for each type of interconnected VoIP offered.**

**Response:**

Both TWC and AOL Enhanced Services, LLC ("AOL Enhanced Services"), a wholly-owned subsidiary of America Online Inc., offer interconnected Voice over Internet Protocol ("VoIP") service to subscribers. TWC demonstrated its compliance with the subscriber notification requirements in its Subscriber Notification Report,[4] as well as in two follow-up letters regarding its progress in advising subscribers of certain VoIP 911-related information.[5] (Copies of these filings are attached as Exhibits IV(C)(1)-(3).) In addition, TWC's Compliance

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[4] *See* letter from Julie Y. Patterson, Vice President and Chief Counsel, Telephony, Time Warner Cable Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-196 (filed Aug. 10, 2005).

[5] *See* letter from Julie Y. Patterson, Vice President and Chief Counsel, Telephony, Time Warner Cable Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-196 (filed Sept. 1, 2005); *see also* letter from Julie Y. Patterson, Vice President and Chief Counsel, Telephony, Time Warner Cable Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 05-196 (filed Sept. 22, 2005).

Letter[6] explains in detail additional efforts it has undertaken to comply with the *VoIP 911 Order's* technical requirements ("TWC Compliance Letter") (attached as Exhibit IV(C)(4)), which provides information regarding TWC's Enhanced 911 ("E911") solution for its Digital Phone interconnected VoIP service, the process by which it obtains and updates information regarding subscribers' registered locations, and information related to nomadic E911.

Likewise, AOL Enhanced Services submitted to the FCC a Subscriber Notification Report[7] (attached as Exhibit IV(C)(5)) and Compliance Letter[8] detailing its VoIP 911 technical compliance related to its AOL TotalTalk Service ("AOL Compliance Letter") (attached as Exhibit IV(C)(6)). AOL Enhanced Services also filed an *ex parte* letter[9] with the Commission providing further elaboration specific to its nomadic E911 solution ("AOL Movement-Detection Solution Letter"). *See* Exhibit IV(C)(7).

**IV.D. How does the Company typically access the 911 tandem or Wireline E911 Network as defined in the VoIP 911 order? Does the Company interconnect directly or indirectly?**

**Response:**

Descriptions of how each entity typically accesses the 911 tandem or Wireline E911 Network are provided in detail in the TWC Compliance Letter (Exhibit IV(C)(4)) and AOL Compliance Letter (Exhibit IV(C)(6)).

**IV.E. Is the Company's CPE (e.g., cable modem, MTA, softphone, etc.) capable of being used at locations other than its primary location? Is the Company's CPE capable of being used on other Cable Systems? If the answer to either of these questions is yes, please describe in detail how the Company intends to comply with the Commission's November 28th deadline given the nomadic capability of the Company's CPE.**

**Response:**

TWC's Digital Phone is not a nomadic service. Digital Phone does not utilize the public Internet to transmit calls, but rather operates to transmit calls only when the MTA devices are attached to the TWC hybrid fiber-coaxial cable television plant and used in conjunction with TWC's switching and routing facilities. Accordingly, TWC's CPE devices are not capable of being utilized on any other Cable Systems, nor are they capable of being utilized over the

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[6] *See* letter from Julie Y. Patterson, Vice President and Chief Counsel, Telephony, Time Warner Cable Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 04-36 and 05-196 (filed Nov. 28, 2005).

[7] *See* letter from Tekedra M. Jefferson, Assistant General Counsel, America Online, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 04-36 and 05-196 (filed Aug. 10, 2005).

[8] *See* letter from Tekedra M. Jefferson, Assistant General Counsel, America Online, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 04-36 and 05-196 (filed Nov. 28, 2005).

[9] *See* letter from Curtis Lu, Acting General Counsel, America Online, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 04-36 and 05-196 (filed Nov. 25, 2005).

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broadband facilities of any entity other than TWC. Moreover, the equipment used in connection with TWC's Digital Phone service is intended for use at a fixed location on TWC's network, and in the vast majority of cases, TWC's eMTAs simply will not function if moved to another location on that network. *See* Exhibit IV(C)(4)). In contrast, the equipment used in connection with AOL TotalTalk Service will function if moved. A detailed description of how AOL intends to comply with the Commission's November 28th deadline given this nomadic capability is set for in the AOL Compliance and AOL Movement-Detection Solution Letters attached hereto as Exhibits IV(C)(6)-(7).

**V.A. Restate the pre-transaction and post-transaction Subscriber counts provided in Applicant's Public Interest Statement for Comcast (pp. 73-75) according to the instructions set forth below in the definition of "Subscriber."**

**Response:**

This question appears directed solely at Comcast and Time Warner thus defers to Comcast's response to this question.

**V.B. Provide affidavits, one signed by a competent officer of each Applicant, stating, based on the officer's personal knowledge and on penalty of perjury, that the proposed transaction will not result in any violation of the channel occupancy limit, 47 U.S.C. § 613(f)(1)(B), 47 C.F.R. § 76.504.**

**Response:**

As explained in the attached affidavit, TWC is still in the process reviewing the channel line-ups of the systems to be acquired from Adelphia and Comcast and putting together the line-ups that will be implemented in those systems after closing. While that process is not yet complete, TWC does not believe that the number of TWC-affiliated national networks carried on the acquired systems at closing will exceed the channel occupancy limit specified in Section 76.504 of the Commission's rules. In any event, if at closing the channel line-up of any acquired system exceeds that limit during the period between closing and the implementation of TWC's new line-up (to the extent the new line-up is not implemented immediately), the make-up of the inherited line-ups would be the result of carriage decisions made by Comcast or Adelphia and will not reflect any self-favoritism on the part of TWC based on affiliation. The channel line-ups implemented by TWC post-closing (as well any it inherits) will, of course, be subject to any valid and enforceable channel occupancy rules subsequently adopted by the Commission.

TWC notes that, in *Time Warner Entertainment Co. v. FCC,* 240 F.3d 1126 (D.C. Cir. 2001), the United States Court of Appeals for the District of Columbia Circuit found that the Commission had neither justified with record support its adoption of the channel occupancy limit specified in Section 76.504, nor established that the limit did not burden speech more than necessary. Consequently, the court reversed and remanded the Commission's adoption of a channel occupancy limit and the Commission has pending a rulemaking proceeding to consider what limit, if any, can be justified. Under the circumstances, the foregoing response and the requested affidavit are submitted without waiver of, or prejudice to, any argument TWC may make, now or in the future, regarding the enforceability of any particular channel occupancy limit.

* * *

Please do not hesitate to contact the undersigned if you have any questions.

Respectfully submitted,

Arthur H. Harding

Arthur H. Harding
*Counsel for Time Warner Inc.*

cc: Best Copy and Printing, Inc.
Donna Gregg
Sarah Whitesell
Erin Dozier
Tracy Waldon
Royce Sherlock
Marcia Glauberman
Julie Salovaara
Wayne McKee
Jim Bird
Jeff Tobias
JoAnn Lucanik
Kimberly Jackson
Neil Dellar
Ann Bushmiller

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**AFFIDAVIT OF MICHAEL DIAMOND**

State of Connecticut)
) ss:
County of Fairfield )

1. I am Michael Diamond, Senior Vice President, Integration Planning, Time Warner Cable Inc. ("TWC"). In that capacity, I have access to information regarding TWC's operational planning with respect to the systems that TWC is seeking to acquire from Adelphia and Comcast.

2. TWC is in the process of conducting a detailed review of the current channel line-ups of the cable systems to be acquired from Adelphia and Comcast and putting together the line-ups that will be implemented in those systems shortly after closing. While that process has not been yet completed, TWC does not believe, based on its current knowledge, that the number of TWC-affiliated national networks carried on the acquired systems at closing will exceed the channel occupancy limit adopted by the Commission (and reversed by the United States Court of Appeals for the District of Columbia Circuit).

3. Under penalties of perjury, I declare the preceding to be true and correct to the best of my knowledge, information, and belief.

Michael Diamond*

Sworn to before me
this 19 day of December, 2005

Notary Public

My Commission Expires: ____________________

DIMITRA SPYROPOULOS
*Notary Public*
My Commission Expires April 30, 2010

*Original Affidavit to be submitted upon receipt.